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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
The Pay Telephone Reclassification) CC Docket No. 96-128 /
and Compensation Provisions of)
The Telecommunications Act of 1996)
)
RBOC/GTE/SNET Payphone Coalition) NSD File No. L-99-34
Petition for Clarification)

To: The Common Carrier Bureau

COMMENTS OF THE AD HOC RESELLERS COALITION

The members of the Ad Hoc Resellers Coalition (the "ARC"),¹ by counsel and in response to the invitation of the Common Carrier Bureau² to comment on various petitions for reconsideration and clarification of the Second Order on Reconsideration,³ hereby join to oppose any modification to the Commission's rules which would impose undue and uneconomic costs on interexchange service resellers. The Second Order on Reconsideration established, in accordance with Congressional dictates, a revised methodology for compensating payphone service providers

¹ The ARC is comprised of 13 interexchange service carriers (*see* Attachment A) who provide competitive toll service through the resale of transmission facilities of the major interexchange carriers, including those WorldCom, Inc. ("WorldCom"), Global Crossing Telecommunications, Inc., ("Global Crossing") and AT&T Corp. ("AT&T").

² *Common Carrier Bureau Seeks Comment on Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration*, Public Notice, DA 01-1967 (rel. Aug. 20, 2001), 66 Fed.Reg. 46793 (Sept. 7, 2001).

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, NSD File No. L-99-34, Second Order on Reconsideration, FCC 91-109 (rel. April 5, 2001) ("Second Order on Reconsideration").

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(“PSPs”) for completed coinless calls. The direct or indirect imposition of an obligation on ARC members and similarly-situated resellers⁴ to compensate PSPs for calls that are not completed is contrary to the specific directives of the Communications Act of 1934, as amended (the “Act”),⁵ and will undermine the competitive position of resellers.

Three Petitioners in this proceeding, WorldCom, AT&T and Global Crossing, seek the Commission’s imprimatur of alternatives or surrogates for the definition of a “completed” call. With some variations, AT&T and WorldCom both seek to define “call completion” as the underlying carrier’s delivery of a dial-around payphone call to a reseller’s switching platform.⁶ Global Crossing suggests the utilization of a timing surrogate to define “call completion” for the purpose of determining whether a payphone call is compensable.⁷ These major “carrier’s carriers”

⁴ All resellers utilizing a switching platform, as well as those resellers accessing the transmission facilities of underlying carriers through an intermediary reseller’s switching platform, will be affected by Petitioners’ proposals. Although the ARC has no information regarding the percentage of resellers who directly or indirectly utilize an independent switching platform, it notes that the total number of toll resellers more than tripled between 1993 and 1999, from 171 to 454 resellers (Federal Communications Commission, *Statistics of the Long Distance Telecommunications Industry*, Table 4 (2001)), and that revenues derived from carrier’s carrier services increased nearly \$4 billion between 1997 and 1999 (*id.*, Table 10).

⁵ 47 U.S.C. § 151 *et seq.*

⁶ AT&T seeks clarification that its general practice of compensating PSPs for all calls sent to a reseller’s switching platform, whether or not such calls are completed, is consistent with the requirements of The Second Order on Reconsideration. AT&T Petition for Clarification and/or Reconsideration (“AT&T Petition”), p. 3. AT&T notes that it “arranges separately for reimbursement with the reseller.” *Id.* at n. 3. WorldCom specifically requests the Commission to declare that “completion” is defined as the act of delivery of a call to a switch-based reseller. WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration (“WorldCom Petition”), pp. 2-4.

⁷ Petition for Reconsideration and Clarification filed by Global Crossing Telecommunications, Inc. (“Global Crossing Petition”), pp. 3-8.

state that they are currently unable to determine whether a call delivered to a reseller's switching platform has been completed,⁸ and that a tracking system is either too costly⁹ or susceptible to controversy.¹⁰

The ARC recognizes the validity of underlying carriers' concern regarding the difficulty and expense of tracking compensable calls.¹¹ The answer to this conundrum is not, however, a nonsensical declaration that all dial-around payphone calls destined for a reseller's switching platform are "completed," and, therefore, compensable. AT&T itself admits that only 70% of calls to its pre-paid card platform are completed.¹² Abandonment of tracking mechanisms to determine call completion is inappropriate because it is contrary to statutory directives, and would unfairly disadvantage resellers' competitive positions. ARC members are able and willing to report call completion to the underlying carriers, or, where contractual arrangements are made directly with PSPs, certify that fact to underlying carriers, thereby relieving them of compensation obligations with respect to those calls.

⁸ AT&T Petition at 3; WorldCom Petition at 3; Global Crossing Petition at 4.

⁹ See AT&T Petition at p. 3 (citing the ability of an underlying carrier to seek reimbursement for call tracking, AT&T suggests that the resellers would recognize a savings by paying for all calls delivered to switching platforms rather than absorbing the administrative costs of tracking); *see also* WorldCom Petition at pp. 3-4.

¹⁰ See, e.g., Global Crossing Petition at pp. 4-6.

¹¹ The ARC notes, however, that the Commission has provided that the costs incurred by facilities-based carriers which are associated with tracking compensable calls may be assessed against resellers. 47 C.F.R. § 64.1310(b).

¹² AT&T Petition, n. 4.

I. Only completed calls are eligible for compensation.

The Telecommunications Act of 1996¹³ directed the Commission to prescribe regulations “to ensure that all payphone service providers are fairly compensated for each and every *completed* intrastate and interstate call”¹⁴ The statutory language is unambiguous, and the Commission, in recognition of both the clear meaning of the term “completed” and its own precedent, correctly determined that a “completed” call is one that is answered by the called party.¹⁵

Advocates of the suggestion that a call should be deemed “completed” when it is delivered to a reseller’s switching platform for PSP compensation purposes conveniently ignore the Commission’s refusal, based upon precedent, to classify calls routed through an interexchange carrier’s platform as two distinct calls – one to the platform, followed by one to the called party.¹⁶ Furthermore, the Commission has already considered, and rejected, the utilization of a time/duration surrogate to determine call completion: “[W]e conclude that exempting calls from per call compensation because they are not of a requisite duration . . . would not be in accordance

¹³ Pub.L.No. 104-104, 110 Stat. 56 (1996).

¹⁴ 47 U.S.C. § 276(b)(1)(A) (emphasis supplied).

¹⁵ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, Docket No. 96-128, 11 FCC Rcd 20,541(1996) (“First Payphone Order”) at para. 63.

¹⁶ *Id.*, citing *Teleconnect Co. V. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1626, 1629 (1995) and *Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1634 (1995); see also *Florida Public Telecommunications Association v. FCC*, 54 F.3d 857, 860 (D.C. Cir. 1995).

with Section 276's mandate”¹⁷

The ARC does not suggest that underlying carriers should be prohibited from minimizing their administrative burden by erring on the side of overcompensating PSPs in lieu of implementing tracking methodologies. The ARC does, however, object strongly to the inevitable result of a Commission-sanctioned surrogate for call completion – that resellers will bear the economic burden of the facilities-based carriers’ business decision.

II. Compensation for calls that are not completed results in a competitive disadvantage for resellers.

Were the Commission to adopt either the presumption of call completion advanced by AT&T and WorldCom, or the timing surrogate advocated by Global Crossing, the competitive interexchange market would be disrupted. Although the petitioning carriers would abdicate any responsibility to track and accurately identify completed calls, despite their ability to recoup the cost of tracking compensable calls, it is not they who will bear the burden for overpayment – the underlying carriers will merely pass along to resellers the expense associated with payphone compensation for every call destined for reseller platforms. At the same time, it is certain that these carriers will carefully monitor call completion as it affects their own compensation obligations, and will, according to AT&T’s figures, thereby recognize a 30% savings in avoiding unnecessary compensation for calls that are not completed.¹⁸

In addition to providing an unwarranted windfall to PSPs, adoption of any of the surrogate proposals obviously will provide a significant competitive advantage to these carrier’s carriers,

¹⁷ First Payphone Order at para. 63.

¹⁸ See *infra* n. 12 and accompanying text.

who also compete in the retail marketplace with their wholesale customers, the resellers. The Commission must not allow its regulatory mechanism to be utilized as a means to skew a competitive market.

Of equal importance is Commission action to ensure the continued viability of its rule allowing resellers to establish or continue individual arrangements with PSPs for billing and collection of compensable calls.¹⁹ It is clear that PSPs would have no economic incentive to contract with resellers for compensation of only completed calls when there exists the opportunity to receive compensation for all calls delivered to a reseller switching platform, whether completed or not. The acceptance of a surrogate for call completion guarantees such a result. Implementation of a surrogate would interfere with existing contracts, and the future willingness of PSPs to enter into contracts directly with resellers who desire to meet their compensation obligations directly.

To maintain a vibrantly competitive environment, the prerogative of resellers to contract directly with PSPs should be maintained and encouraged. The right of resellers to contract independently with PSPs to assume compensation obligations does not require, nor even allow, any involvement by the underlying carrier in these bilateral arrangements, but merely certification by the reseller to the underlying carrier that independent agreements have been reached.²⁰ ARC members recognize, however, that the requirements of the Second Order on Reconsideration place the primary compensation responsibility on carrier's carriers. Accordingly, the ARC

¹⁹ Second Order on Reconsideration at para. 12; 47 C.F.R. §64.1310(b).

²⁰ At least one underlying carrier has attempted to insinuate itself into the reseller-PSP relationship by requiring that switch-based resellers utilize a tri-party certification form containing representations from both the PSP and the reseller in favor of the underlying carrier.


suggests that current requirements be clarified to relieve an underlying carrier of its compensation obligations with respect to PSPs identified by resellers as parties to independent compensation contracts. In other circumstances, underlying carriers can and should look to switch-based resellers as the source of tracking information with respect to completed calls.

III. Conclusion

The ARC submits that the public interest in ensuring full and fair compensation to PSPs, in accordance with the Act, while simultaneously maintaining vigorous competition in the interexchange market, stimulated, in large part, by the activities of resellers, depends upon the preservation and implementation of the clear meaning of the term "completed" as the sole basis for determining whether a dial-around payphone call is compensable. It is essential that the Commission preserve the ability of market competitors to control their own business decisions. Accordingly, the ARC opposes the introduction of any surrogate mechanism to displace tracking as a means of determining call completion.

Respectfully submitted,

THE AD HOC RESELLERS COALITION

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October 9, 2001

COMMENTS OF THE AD HOC RESELLERS COALITION

ATTACHMENT A

Members of the Ad Hoc Resellers Coalition

South Carolina Net, Inc.
Columbia, SC

FTC Communications, Inc.
Kingstree, SC

Chesnee Long Distance, Inc.
Chesnee, SC

Community Long Distance
DBA Comporium Long Distance
Rock Hill, SC

West Carolina Rural Telephone Coop., Inc.
Abbeville, SC

Piedmont Rural Telephone Coop.
Laurens, SC

PBT Communications
Gilbert, SC

Palmetto Rural Telephone Coop.
Walterboro, SC

Hargray Long Distance
Hilton Head, SC

HTC Communications, Inc.
Conway, SC

Sandhill Telephone Coop., Inc.
Jefferson, SC

Home Long Distance, Inc.
Moncks Corner, SC

Chester Long Distance
Chester, SC

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Ad Hoc Resellers Coalition" was served on this 9th day of October 2001, by first class US mail postage prepaid or hand delivery, to the following parties:



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